

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	NO. 3:18-CR-0097
v.	:	
	:	(MARIANI, J.)
ROSS ROGGIO, and	:	
ROGGIO CONSULTING, LLC,	:	
Defendants.	:	

**GOVERNMENT’S *IN LIMINE* MOTION TO PRECLUDE THE
DEFENDANT FROM ASSERTING A DURESS DEFENSE**

The Government, by and through undersigned counsel,
respectfully moves *in limine* for the Court to issue an Order to preclude
the defendant from asserting a duress defense, and in support thereof
states:

1. Roggio’s last continuance motion made oblique reference to
possible foreign witnesses who could testify that Roggio acted under
duress (Doc. 207 at ¶20).

2. Duress is an affirmative defense. *United States v. Grover*,
831 F. App’x 604, 607 (3d Cir. 2020) (citing *United States v. Alston*, 526
F.3d 91, 95 (3d Cir. 2008)). The defendant bears the burden of proving
the defense of duress by a preponderance of the evidence. *Dixon v.*
United States, 548 U.S. 1, 17 (2006). A defendant is entitled to present

the defense only after first making a *prima facie* showing of duress.

United States v. Naovasaisri, 150 F. App'x 170, 173 (3d Cir. 2005). It is appropriate for a court to rule “pretrial on a motion to preclude a defendant from presenting a duress defense where the government contends that the evidence in support of that position would be legally insufficient.” *United States v. Miller*, 59 F.3d 417, 421 (3d Cir. 1995).

3. To establish that he was under duress when he committed the crimes, Roggio must show: (1) an immediate threat of death or serious bodily injury, (2) a well-grounded fear that the threat will be carried out, (3) no reasonable opportunity to escape the threatened harm, and (4) that he did not recklessly place himself in a situation in which he would be forced to engage in criminal conduct. *Grover*, 831 F. App'x at 607 (citing *Miller*, 59 F.3d at 422).

4. Since Roggio has failed to proffer any – much less sufficient – evidence to support those four elements, the Court should preclude him from presenting the defense at trial. *Id.* (citing *United States v. Bailey*, 444 U.S. 394, 416 (1980)).

Dated: April 10, 2023

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on April 10, 2023, he served a copy of the attached **GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE THE ASSERTION OF A DURESS DEFENSE** by electronic means to:

Gino Bartolai
bartolai@ptd.net

/s/ Todd K. Hinkley
Todd K. Hinkley
Assistant United States Attorney

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CERTIFICATE OF NON-CONCURRENCE

The undersigned hereby certifies that he attempted to speak to Gino A. Bartolai, Esquire, counsel for Ross Roggio concerning the defendant's concurrence/non-concurrence in the attached motion *in limine*. Attorney Bartolai, indicates that the defense does not concur in the attached motion.

/s/ Todd K. Hinkley

Todd K. Hinkley

Assistant United States Attorney